

Legal Opinion: GMP-0135

Index: 7.331, 7.350, 7.413

Subject: FOIA Appeal: Title VIII Conciliation Notes

December 7, 1992

Ms. Ann Scearce  
1318 Broadmoor Drive East  
Seattle, Washington 98112

Dear Ms Scearce:

This is in response to your Freedom of Information Act (FOIA) appeal dated September 29, 1992. On September 10, 1992 you requested a copy of the file in HUD Case No. 10-92-0125-1, a case brought under Title VIII of the Civil Rights Act of 1968. In a letter dated September 25, 1992, Joyce Moen, FOIA Liaison Officer, Seattle Regional Office, released a copy of the Final Investigation Report (FIR) and the Investigative Section of the case file, consisting of 120 pages. The Deliberative Section of the case file was withheld under Exemption 5 of the FOIA, 5 U.S.C. Section 552(b)(5).

I have determined to affirm, in part, and reverse, in part the initial denial.

The following documents are being withheld under the deliberative process privilege of Exemption 5 which protects predecisional information involved in the decision-making process: (1) two intra-agency memoranda; (2) conciliation notes; and (3) interview notes of the investigator conducting the investigation of the case.

In addition, the conciliation notes are being withheld under Exemption 3, 5 U.S.C. Section 552(b)(3). Exemption 3 incorporates the disclosure prohibitions that are contained in various other federal statutes. The Fair Housing Amendments Act of 1988, P.L. 100-430, amended Title VIII of the Civil Rights Act of 1968 to prohibit disclosure of information obtained in the course of conciliation. 42 U.S.C. Section 3610(d). See also, 24 C.F.R. Section 103.330. The conciliation notes pertain to matters involving conciliation of the case and, thus, are exempt from disclosure by the disclosure prohibitions of Title VIII, as amended, as an Exemption 3 statute.

I have determined to reverse the initial denial and release copies of two interviews conducted in the case. Copies of these documents are enclosed.

Pursuant to 24 C.F.R. Section 15.21 I have determined that the public interest in protecting the deliberative process militates against disclosure of the information listed above.

You are entitled to judicial review of this determination

under 5 U.S.C. Section 552(a)(4). You may seek such review in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, or in the judicial district where the records you seek are located.

Very sincerely yours,

George L. Weidenfeller  
Deputy General Counsel (Operations)

Enclosures

cc: Yvette Magruder  
John Vandermolen, 10G